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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,885	11/17/2003	John H. Thoroski	32210.193.1	5281
22859 7590 02/14/2008 INTELLECTUAL PROPERTY GROUP FREDRIKSON & BYRON, P.A. 200 SOUTH SIXTH STREET SUITE 4000 MINNEAPOLIS, MN 55402				
EXAMINER				
FRANCIS, FAYE				
ART UNIT		PAPER NUMBER		
3725				
MAIL DATE		DELIVERY MODE		
02/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/715,885

**Applicant(s)**

THOROSKI, JOHN H.

**Examiner**

Faye Francis

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF 298)  
Paper No(s)/Mail Date 9/23/04, 9/27/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

The claims are indefinite because they are drafted in such a way that it is not clear whether they are drawn to the subcombination of a processing apparatus or to the combination of a processing apparatus and eggshells. For example **only**, and with reference to claim 1, line 1 recite "An apparatus particularly adapted, for processing eggshells which comprise outer portions and membrane portions..." indicating that what is claimed is the subcombination of a processing apparatus. Note also the phrase "said apparatus comprising" on line 2. On the other hand, portions of the claim recite limitations on the eggshells [note the limitations in lines 6-9 of the claim that one impacting member which is mounted in said chamber to a circumferential path to impact said eggshells, to break up the eggshells and to reduce particle size of at the outer eggshell portions to form smaller outer particles that are separated from said membrane portions; d) said apparatus having an eggshell particle collecting area positioned below

said impact zone]. These elements indicate that perhaps the applicant's intention is to claim the processing apparatus with the eggshells. All of the independent claims rejected under the aforementioned grounds contain the same defects.

In this office action it is presumed that the claims are drawn to the subcombination of the processing apparatus only, in order to give the claims their broadest reasonable interpretation during examination, per applicable rules. Accordingly, all references in the claims the eggshells are only to be statements of intended use with regard to the claimed processing apparatus. Said differently, all such features are not considered to further structurally limit the claimed processing apparatus.

However clarification of the scope of the claims is required in response to this office action. Should applicant desire to claim the eggshells in any claim, and then the same should be clearly done. The applicant is reminded that it is by now well settled that features not claimed may not be relied upon in support of patentability.

Claim 1 is indefinite since all of the structure which the applicant considers to be encompassed by the phrase "particularly adapted" cannot be determined.

Claim 1 is indefinite because it is not clear what the phrase "a section and positioned sections" is intended to encompass.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams.

The claims are interpreted as best understood by the examiner. The claims are interpreted as requiring apparatus comprising housing, a processing chamber, an impacting portion 17, a screen 20, a collecting area and a pneumatic portion 44. Williams is considered to clearly show a device having the structural elements of the claims that can be understood.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Faye Francis/  
Primary Examiner  
Art Unit 3725

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